

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

No. C 07-02564 CRB

Plaintiff,

AMENDED SCHEDULING ORDER

v.

DICK/MORGANTI,

Defendant.

This action arises from a dispute between a general contractor and a subcontractor regarding moneys due for work performed on the new San Francisco Federal Building Project (the "Project"). Now pending before the Court is a motion to stay filed by American Casualty Company and National Union Fire Insurance Company ("the Sureties"). The Court has deferred consideration of this motion and now sets forth an amended briefing schedule:

1. Briefs by Subcontractors. All third-party defendants -- Boyett Construction, Marelich Mechanical, Performance Contracting Group, Permasteelisa Group USA, Permasteelisa Cladding Technologies, and Rosendin Electric -- are hereby ORDERED to file a brief apprising the Court of the status of their subcontracting claims in connection with the Project and presenting their position on the pending motion to stay. These briefs shall include the following information:

- (a) whether the third-party defendant has heretofore presented any claims against Dick/Morganti in connection with subcontracting work it performed on the Project, and if so, a *brief* description of the discrete claims presented; and
- (b) whether the third-party defendant plans to advance any claims not heretofore presented to Dick/Morganti in connection with the subcontracting work it performed on the Project.¹

As to any third-party defendant that has already submitted or plans to submit claims to Dick/Morganti, whether as a claim for relief in this Court or a claim for relief under the administrative procedures set forth in the Contract Disputes Act, the Court further orders the third-party defendants to provide the following information:

- (a) when the third-party defendant presented its claims to Dick/Morganti;
- (b) whether, and when, the GSA initially adjudicated these claims;
- (c) whether, and when, the third-party defendant sought certification of its claims by Dick/Morganti pursuant to 41 U.S.C. § 605(c)(1);
- (d) whether, and when, Dick/Morganti certified the third-party defendant's claims pursuant to 41 U.S.C. § 605(c)(1); and
- (e) as to any of the third-party defendant's claims that were certified and submitted to the "contract officer" more than sixty (60) days ago, whether the contract officer has yet discharged its duty under 41 U.S.C. § 605(c)(2) to "issue a decision" or "notify the contractor of the time within which a decision will be issued."

Further, as to the merits of the motion now pending, the Court orders the third-party defendants to address the following issues, to the extent that they take a position on them:

- (a) whether, and why, the third-party defendant believes that its claims for uncompensated (or under-compensated) subcontracting work on the Project will be affected by the adjudication of the claims advanced by Webcor in this lawsuit;
- (b) whether, and why, the third-party defendant supports or opposes the Sureties' pending motion to stay this proceeding.

¹ In directing the third-party defendants to state whether they intend to advance any heretofore unrepresented claims, the Court in no way suggests, nor should this Order or the third-party defendants' briefs be construed to suggest, that any claims not identified by the third-party defendants in their briefs will or should be waived. The purpose of the Court's Order is not to make sure that all possible legal claims are advanced or all possible bases of liability identified. Rather, it is to enable the Court to understand the scope of the controversy presented by this lawsuit, to the extent that such a rough understanding is now possible.

1 In ordering the third-party defendants to address these issues, the Court does not preclude
2 them from raising or briefing any other matters that they may view as germane to the pending
3 motion to stay. The third-party defendants shall file their briefs, and any relevant supporting
4 materials, not later than Friday, September 21, 2007. The third-party defendants' briefs shall
5 not exceed eight (8) pages.

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7 **2. Simultaneous Supplemental Briefs.** Webcor and the Sureties are hereby ORDERED to
8 file simultaneous supplemental briefs in response to the briefs of the third-party defendants.
9 Specifically, in their brief, the Sureties shall identify: (a) any claims already submitted to
10 Dick/Morganti for certification pursuant to 41 U.S.C. § 605(c)(1), but which have not yet
11 been "passed through" to the contract officer; and (b) the manner and date by which it
12 anticipates that the certification process as to these claims, including its so-called "Global
13 Claim," will be completed. The simultaneous supplemental briefs shall not exceed ten (10)
14 pages, and shall be filed not later than Friday, October 5, 2007.

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16 The Court will have a further hearing on the motion to stay on Friday, October 19,
17 2007, at 10:00 a.m. The Court will provide additional time for the parties to file their briefs
18 only upon stipulation and agreement by all other interested parties.

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20 **IT IS SO ORDERED.**

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23 Dated: August 27, 2007



CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE